

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAP AG and SAP AMERICA, INC.,
Plaintiffs,
v.
DATATERN, INC.,
Defendant.

Case No. 1:11-cv-02648 KBF
(ECF CASE)

**SAP AG AND SAP AMERICA, INC'S MEMORANDUM OF LAW
IN SUPPORT OF THEIR CONDITIONAL NON-OPPOSITION TO
DEFENDANT DATATERN INC.'S MOTION TO SUPPLEMENT THE RECORD**

Plaintiffs SAP AG and SAP America, Inc. (“SAP”) hereby submit this conditional non-opposition to Defendant DataTern, Inc.’s (“DataTern”) Motion To Supplement the Record (“Motion”) regarding the deposition transcript of Neeraj Gupta (“Gupta Transcript”).

SAP does not oppose the submission of the entire Gupta Transcript. However, because DataTern invokes the Rule of Completeness, it is appropriate for DataTern to identify the particular testimony it believes is necessary to consider for completeness before being permitted to do so. DataTern provides in its brief a couple general examples with a broad reference to potentially related testimony. For each cited passage of Gupta testimony for which DataTern believes related testimony must be considered for fairness, DataTern should identify today which specific pages and lines of testimony from within the 232 pages of testimony it contends must be considered—without further substantive argument. A simple chart will do. That way, such identified testimony can be reviewed in advance and addressed at the claim construction hearing Monday. DataTern has had the Reply Claim Construction Brief for ten days so such notice of the particular testimony it believes must in fairness be considered is reasonable, especially considering the overall length of the transcript. This will allow the orderly consideration of DataTern’s position.

Dated: July 27, 2012

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Respectfully submitted,

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